

### **REMARKS**

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1, 2, 5-13, and 19-28 are pending in the application. Independent claims 1 and 21 have been amended to better define the claimed invention. Claim 13 has been amended to correct its dependency. New claims 22-28 have been added to provide Applicants with the scope of protection to which they are believed entitled.

The double patenting rejection of claims 15-16 and indefiniteness rejection of claim 13 are moot or believed overcome in view of the above amendments.

The *35 U.S.C. 102(b)* rejection of claims 1, 2, 5-11 and 19-21 as being anticipated by US Patent to 4,909,986 to Kobayashi et al is traversed because the reference fails to teach or disclose each and every element of the rejected claims.

Kobayashi relates to a very complicated multi-component formulation to be used as an **aerosol** for the removal of bad odors including animal excrement, whereas the compositions of the present invention are prepared for application on the surface of animal excrements and not in the air. These different modes of application lead to different compositions as discussed below.

As to claims 1 and 21, Kobayashi fails to teach or disclose **film forming polymers in sufficient quantities** to form a solid film over the bulk of excrement, as presently claimed. It is noted that Kobayashi describes very specific amphoteric copolymers, of acrylamide which have a concentration range of 0.05 – 50ppm and a molecular weight of at least 100,000. Such a minute concentration of the high molecular weight copolymer is intended to act as a flocculant (col.9, line 17 and col.10, line 30). At these concentrations, there is insufficient copolymer present to form a continuous barrier film even by accident.

As to claim 7, the Examiner does not specify where in Kobayashi the claimed concentration range of **1-10 %w/v** of the acid might be disclosed. Clarification is respectfully requested.

As to claim 10, the Examiner does not specify where in Kobayashi the claimed concentration range of **0.1-10%w/v** of the water soluble film forming polymers might be found. Clarification is respectfully requested. It should be noted that the lower limit of the claimed range, i.e., 0.1 %w/v or 1,000 ppm, is still much higher than upper limit of the 0.05-50 ppm range disclosed by Kobayashi.

As to claim 20, the Examiner does not specify where in Kobayashi the claimed water soluble film forming polymers which are **polyacrylic acids** might be disclosed. Clarification is respectfully requested.

Accordingly, Applicants respectfully submit that the *35 U.S.C. 102(b)* rejection relying on Kobayashi is erroneous and should be withdrawn. Notwithstanding, Applicants have voluntarily amended independent claims 1 and 21 to further distinguish the claimed invention from Kobayashi.

Amended claims 1 and 21 now require that the carboxylic acid be in **free form**. This feature is not taught or suggested by Kobayashi. In Kobayashi, the acids are neutralized as their alkali metal or calcium salts (col.8, lines 11-14). So, there are, in fact, basic or neutral salts of carboxylic acids, but *no free carboxylic acids* in the Kobayashi formulation. Amended claims 1 and 21 are thus patentable over Kobayashi.

Claims 2, 5-13 and 19-28 depend from claim 1 or 21, and are considered patentable at least for the reason advanced with respect to amended claims 1 and 21. Claims 2, 5-13 and 19-28 are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art.

The alternative *35 U.S.C. 103(a)* rejection of claims 1, 2, 5-11 and 19-21 as being obvious over Kobayashi is traversed because (i) the Examiner fails to provide an objective reason why a person of ordinary skill in the art would have been motivated to modify Kobayashi to arrive at the claimed invention; and (ii) even if Kobayashi is properly modifiable, the reference would still lack the originally claimed film forming polymers in sufficient quantities and additionally claimed carboxylic acid be in free form of independent claims 1 and 21. Withdrawal of this *35 U.S.C. 103(a)* rejection is therefore believed appropriate.

The 35 U.S.C. 103(a) rejection of claims 11-13 as being obvious over Kobayashi in view of US Patent No. 4,839,089 to Shimizu is traversed for at least the reasons indicated immediately above. This rejection is also flawed because Shimizu is *non-analogous art*. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Clearly, Shimizu is not in the same field of Applicants' endeavor. It is sufficient to look at the international and US classification of Shimizu, Dodd (U.S. Patent No. 5,882,638) and Kobayashi to determine that Shimizu is in a technical field completely different from that of the present invention. Moreover, Shimizu is not reasonably pertinent to *the particular problem* with which the inventors were concerned because the problem of Shimizu, which is conversion of waste *cooking oil* to liquid soap, is absolutely unrelated to the particular problem of the present invention, which is to reduce malodors and facilitate handling of *excrement*. Shimizu is thus non-analogous art which cannot be relied upon in a 35 U.S.C. 103(a) rejection against the claims of the instant application. Withdrawal of this 35 U.S.C. 103(a) rejection is therefore believed appropriate.

The 35 U.S.C. 103(a) rejection of claims 1, 5-10 and 19-21 as being unpatentable over Dodd is noted. The Dodd reference was applied in the parent (U.S. Patent No. 6,413,506) of this application. At the interview held January 23, 2002, the Examiner *agreed* that independent claim 1 of the instant application defines over Dodd and other art applied in the parent. *See* paper No. 18 in the parent's file. It appears that the Examiner has changed her position without specifying any reason. Clarification is respectfully requested.

The 35 U.S.C. 103(a) rejection relying on Dodd is erroneous and therefore traversed for the reasons advanced repeatedly during prosecution of the parent. It is noted that the Examiner consistently disregards Applicants' arguments or fails to specify why Applicants' arguments are not persuasive. Clarification is respectfully requested. For the Examiner's convenience of review, the previous arguments are repeated herein below:

Dodd clearly fails to teach or suggest all limitation of claim 1, i.e. the claimed water soluble **film forming** polymers. Dodd relates to methods of controlling environmental malodors on human skin comprising the application to the skin of a composition comprising from about 0.1% to about

5% by weight of solubilized, water-soluble, uncomplexed cyclodextrin; and an aqueous carrier. The term "environmental malodors", as used by Dodd means any odor which may be on a human which is not the result of human body odor and/or body fluids. *See* col. 2 lines 5-35 of Dodd. Thus, Dodd tends to remove environmental malodors on human skin which is not the result of human body odor and/or body fluids. In this aspect, Dodd, generally speaking, is unrelated to the present invention which aims to treat human and animal excrement. Moreover, **the composition of Dodd is intended to be directly applied on the skin, and hence, should not contain any film forming components. A barrier film on the skin would both be uncomfortable and prevent respiration.**

The 35 U.S.C. 103(a) rejection relying on Dodd is erroneous and therefore traversed also because the Examiner fails to provide an objective reason why a person of ordinary skill in the art would have been motivated to modify Dodd to arrive at the claimed invention. The Examiner's "routine experimentation" rationale is not understood. At least, it is unclear as to what parameter or component of Dodd needs to be optimized by routine experimentation. Clarification is respectfully requested.

In view of the above, withdrawal of 35 U.S.C. 103(a) rejection relying on Dodd is therefore believed appropriate.

New claims 22-28 are patentable over the applied art of record for the following reasons.

As to claims 22 and 27, Kobayashi fails to teach or suggest that the water soluble polymers are selected from the claimed group. Note that acrylamide is not present in the Markush group of claims 22 and 28.

As to claims 23-24, Kobayashi fails to teach or suggest the claimed pH. Note that Kobayashi does not include free acid. Dodd does not appear to teach or suggest the claimed pH because no a person of ordinary skill in the art would have suggested applying the claimed formulation with a pH of about 1.5 on human or animal skin due to its corrosive effect.

As to claim 25, Kobayashi fails to teach or suggest the claimed molecular weight. It should be note that Kobayashi requires the polymers to have a molecular weight of at least 100,000.

As to claim 26, Kobayashi fails to teach or suggest the use of tap water in the solution. Note that the Kobayashi formulation is so sensitive to its surroundings that it requires sterilized water that should be protected with 3.3% alcohol. (col.9, line 55 and example1).

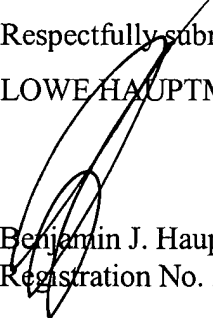
Each of the Examiner's rejections has been traversed. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The references cited in form PTO-892 attached to the Office Action are noted. Please refer to the attached Appendix for detailed comments on the relevancy of the references to the claimed invention.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

Respectfully submitted,

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**MARKED-UP VERSION SHOWING CHANGES MADE**

**IN THE CLAIMS:**

Please cancel claims 15-16 without prejudice or disclaimer.

Please amend the claims as follows:

1. (Twice Amended) Aqueous deodorizing compositions for human and animal excrement consisting essentially of

a carboxylic acid in free form and in an amount sufficient to neutralize nitrogenous odor-generating components in said excrement; and

water soluble film forming polymers in quantities sufficient to form a solid film over the bulk of said excrement upon application.

13. (Twice Amended) Deodorizing compositions according to claim [10 or 11] 12, wherein the Limonene is in a concentration range of 0.01 - 0.005% w/v.

21. (Amended) Aqueous deodorizing compositions for human and animal excrement comprising:

a carboxylic acid in free form and in an amount sufficient to neutralize nitrogenous odor-generating components in said excrement; and

water soluble film forming polymers in quantities sufficient to form a solid film over the bulk of said excrement upon application, thereby greatly reducing the vapor pressure of offensive odor producing compounds and facilitating easy handling of said deodorized excrement.